

IN THE SUPREME COURT OF TENNESSEE
WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, APRIL 1997 SESSION

FILED

August 19, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

TIMMY RAY BEARD,)	
)	ROANE CHANCERY
Plaintiff/Appellee)	
)	Hon. Frank V. Williams, III,
v.)	Chancellor
)	
QUADREX CORPORATION and)	
LIBERTY MUTUAL INSURANCE)	NO. 03S01-9610-CH-00109
COMPANY,)	
)	
Defendants/Appellants)	

For the Appellant:

Gerald L. Gulley, Jr.
P.O. Box 1708
Knoxville, Tenn. 37901-1708

For the Appellees:

Richard K. Evans
P.O. Box 777
Kingston, Tenn. 37763

MEMORANDUM OPINION

Members of Panel:

E. Riley Anderson, Justice
John K. Byers, Senior Judge
Roger E. Thayer, Special Judge

AFFIRMED

THAYER, Special Judge

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Defendants, Quadrex Corporation and Liberty Mutual Insurance Company, have appealed from the trial court's award of 50% permanent partial disability to the body as a whole. They contend the court was in error in fixing any disability for plaintiff's psychological injury and that the award exceeded the statutory cap of six times the medical impairment rating of 5%.

Plaintiff, Timmy Ray Beard, sustained a low back injury in a work-related accident on December 13, 1993. He was 36 years of age at the time of the trial and had completed the 11th grade. He was qualified to do manual labor jobs. He returned to work during June 1994 but had to stop working because he said he was hurting so much he could not work. He has not returned to work.

Plaintiff came under the care of Dr. Donald D. Dietze, a neurosurgeon, who testified by deposition. He stated the lumbosacral injury resulted in a 5% medical impairment. Plaintiff was treated with medication and therapy followed by a work-hardening program. The doctor placed certain restrictions on his lifting, standing, stooping, etc. activities.

Plaintiff eventually was seen by Dr. Catherine E. Gyurik, a psychiatrist, whose testimony was presented by two depositions. The first deposition was taken on December 4, 1995 and the second deposition was recorded on June 27, 1996.

Dr. Gyurik first saw plaintiff on June 12, 1995, which was about eighteen months after the accident. She told the court plaintiff had gained about fifty pounds; he was not sleeping; he was not socially active; and he was irritable and agitated. She gave a diagnosis of classical depression with moderate impairment, which meant he was greatly impaired in connection with his vocational ability. She said this would result in a 25-50 percent impairment for his psychological condition. The doctor prescribed anti-depressant medication and was of the opinion the depression was due to the physical injury he had sustained on the job.

In the second deposition, she indicated she had seen plaintiff six more times, that he was still on medication and would probably have to continue same for a very long time and maybe for life; that he had reached maximum medical improvement from a psychiatric standpoint at the last visit on May 20, 1996. At this time, she concluded his condition had improved and he had mild impairment which would result in a rating of 10-20%.

Dr. Gyurik was of the opinion plaintiff's depression started at the time he was released to return to work; he was told he could work but was confronted with pain and realized he could not work. She said this was a blow to his esteem, his ego strength and a very real blow to him financially.

A vocational expert witness, Dr. Julian Nadolsky, testified plaintiff was 100% disabled based on his physical and psychiatric condition. The witness stated the 100% disability was given primarily because of the physical restrictions imposed by Dr. Dietze.

In fixing the award of 50% disability to the body as a whole, the Chancellor found plaintiff's total medical impairment to be 15% as a result of the physical and mental condition.

The review of the case is *de novo* accompanied by a presumption of the correctness of the findings of fact unless we find the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2).

The trial court is in a better position to judge credibility and weigh evidence where oral testimony is involved. However, where evidence is introduced by deposition, the appellate court is in as good a position as the trial court to review and weigh testimony. *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989).

Defendants insist plaintiff's mental injury is not compensable because the proof is lacking in showing the condition arose from "an identifiable stressful, work-related event producing a sudden mental stimulus such as fright, shock or excessive unexpected anxiety," citing *Gatlin v. City of Knoxville*, 822 S.W.2d 587, 591-92 (Tenn. 1991) and a number of other cases supporting this particular rule.

There are two different rules in connection with determining whether a mental condition or disorder is compensable. First, recovery is appropriate for a mental injury by accident or occupational disease, standing alone, if the mental disorder is caused by an identifiable, stressful, work-related event producing a sudden mental stimulus such as fright, shock or excessive unexpected anxiety. Secondly, compensation for psychological disorders has been allowed when an employee sustains a compensable work-related injury by accident and thereafter experiences a mental disorder which is caused by the original compensable work-related injury. *Hill v. Eagle Bend Mfg., Inc.* _____ S.W.2d _____ (filed at Knoxville, April 7, 1997).

Defendants' reliance on the ruling in the *Gatlin* case is misplaced. The *Gatlin* ruling was supported by facts involving the application of the first rule where a mental condition may develop without a physical injury being involved. In the present case, employee Beard sustained a physical injury to his back which the evidence indicated resulted in his state of depression. Under this evidence, plaintiff need not show his mental condition resulted from a specific stressful event at work.

In the case of *Batson v. Cigna Prop. & Cas. Cos.*, 874 S.W.2d 566 (Tenn. 1994), the employee began experiencing mental problems shortly after returning to work and being unable to perform work-related duties. The court found the claim was the direct result of the employee's being unable to work after sustaining a work-related injury. Defendants' attempt to distinguish this case from the present case saying the mental condition in *Batson* occurred soon after the employee attempted to return to work and that plaintiff Beard did not see his psychiatrist until about one year after attempting to return to work.

Although this factual difference between the two cases does exist, we see no real reason the results should be different. We find the real test in determining whether the mental injury is compensable is for the court to determine whether the mental injury is the direct causal event following a work-related injury and not necessarily the point in time the mental injury develops.

We find plaintiff's claim for a mental disorder and physical injury to be compensable.

Since the injuries occurred after August 1, 1992, and the award of benefits is to the body as a whole, the statutory cap on the award of benefits would apply. Defendants concede the return to work was not meaningful and the multiplier cap of six times the impairment would control. See T.C.A. § 50-6-241(b). The Chancellor found the two impairments would total 15%. The award of 50% to the body as a whole is well within the statutory cap.

Finding the evidence does not preponderates against the rulings of the trial court, the judgment is affirmed. Costs of the appeal are taxed to defendants and sureties.

Roger E. Thayer, Special Judge

CONCUR:

E. Riley Anderson, Justice

John K. Byers, Senior Judge

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AT KNOXVILLE

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TIMMY RAY BEARD)
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vs.) No. 12,476
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) Hon. Frank V. Williams, III
) Chancell
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QUADREX CORPORATION and)
LIBERTY MUTUAL INSURANCE)
COMPANY,)
) 03S01-9610-CH-00109
Defendants/Appellants.)

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the defendants/appellants, Quadrex Corporation and Liberty Mutual Insurance Company and surety, Gerald L. Gulley, Jr. , for which execution may issue if necessary.

08/19/97

